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Ferguson Enterprises, Inc. and Joseph Lapham. Case 07–CA–052306

March 20, 2012

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS HAYES, GRIFFIN, AND FLYNN

The Acting General Counsel seeks default judgment in this case on the ground that the Respondent, Ferguson Enterprises, Inc., has failed to file an answer to the amended compliance specification. On September 22, 2010, the Board issued a Decision and Order,¹ that, among other things, ordered the Respondent to make whole discriminatees Joseph Lapham, Miles Reynolds Jr., George Cook, David Hall, and William Lewis for any loss of earnings and other benefits suffered as a result of the Respondent's unfair labor practices in violation of Section 8(a)(1). On May 16, 2011, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order.²

A controversy having arisen over the amounts due the discriminatees, on October 31, 2011, the Regional Director issued a compliance specification and notice of hearing alleging the amount of backpay due under the Board's Order and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. The Respondent filed an answer on November 21, 2011. On December 29, 2011, the Region issued an amended compliance specification and notice of hearing. By letter dated January 13, 2012, counsel for the Respondent informed the Region that the Respondent had directed him not to file an answer to the amended compliance specification. By letter dated January 18, 2012, counsel for the Respondent withdrew the Respondent's November 21, 2011 answer to the compliance specification.

On January 30, 2012, the Acting General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On January 31, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent failed to file a response. The allegations in the motion and in the amended compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

Here, according to the uncontroverted allegations of the motion for default judgment, although the Respondent initially filed an answer to the original compliance specification, the Respondent, by counsel, subsequently withdrew its answer. In addition, the Respondent has failed to file an answer to the amended compliance specification. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the compliance specification must be considered to be true.³

Therefore, based on the withdrawal of the Respondent's answer to the original compliance specification, and in the absence of good cause for the Respondent's failure to file an answer to the amended compliance specification, we deem the allegations in the amended compliance specification to be admitted as true, and grant the Acting General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the amended compliance specification, and we will order the Respondent to pay those amounts, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Ferguson Enterprises, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, plus interest accrued to the date of payment, as prescribed in *New*

¹ 355 NLRB No. 189.

² No. 11–1086.

³ See *Maslin Transport*, 274 NLRB 529 (1985).

Horizons for the Retarded, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws:⁴

Joseph Lapham	\$122,219
Miles Reynolds Jr.	42,165
Reynolds' Fringe Benefits	33,834

⁴ The Board has declined to apply its policy, announced in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011), of daily compounding interest on backpay awards, in cases such as this that were already in the compliance state on the date that decision issued. *Rome Electrical Systems, Inc.*, 356 NLRB No. 38 slip op. at 1 fn. 2 (2010).

The Acting General Counsel requests that the Respondent be required to submit the appropriate documentation to the Social Security Administration so that when backpay is paid, it will be allocated to the appropriate periods. Because the relief sought would involve a change in Board law, we believe that the appropriateness of this proposed remedy should be resolved after a full briefing by the affected parties, and there has been no such briefing in this case. Accordingly, we decline to order this relief at this time. See, e.g., *Ishikawa Gasket America, Inc.*, 337 NLRB 175, 176 (2001), enf. 354 F.3d 534 (6th Cir. 2004), and cases cited there.

George Cook	40,546
Cook's Fringe Benefits	48,424
David Hall	27,320
William Lewis	48,238
Lewis' Fringe Benefits	37,264
TOTAL AMOUNT DUE:	\$400,010

Dated, Washington, D.C. March 20, 2012

Brian E. Hayes,	Member
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Richard F. Griffin, Jr.,	Member
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Terence F. Flynn,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD